

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

APR 29 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

SENO ARIAHADI,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 03-74634

Agency No. A79-532-763

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted April 22, 2008^{**}

Before: GRABER, FISHER, and BERZON, Circuit Judges.

Seno Ariahadi, a native and citizen of Indonesia, petitions for review of the Board of Immigration Appeal's ("BIA") order dismissing his appeal from an immigration judge's ("IJ") decision denying his application for withholding of

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{*} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

removal and protection under the Convention Against Torture (“CAT”), and denying his request for voluntary departure. We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence the agency’s factual findings, *Al-Harbi v. INS*, 242 F.3d 882, 888 (9th Cir. 2001), and review de novo claims of constitutional violations in immigration proceedings. *Ram v. INS*, 243 F.3d 510, 516 (9th Cir. 2001). We deny the petition for review.

The BIA did not make an explicit adverse credibility determination, so we take Ariahadi’s factual contentions as true. *See Kataria v. INS*, 232 F.3d 1107, 1114 (9th Cir. 2000). Ariahadi is not eligible for withholding of removal because the harassment and threats he experienced do not compel a finding of past persecution, *see Nagoulko v. INS*, 333 F.3d 1012, 1014-18 (9th Cir. 2003), and he did not “demonstrate that it is more likely than not that he would be subject to persecution on one of the specified grounds.” *Al-Harbi*, 242 F.3d at 888 (internal quotation marks and citations omitted); *cf. Lolong v. Gonzales*, 484 F.3d 1173, 1181 (9th Cir. 2007) (en banc).

Ariahadi also did not demonstrate that he is entitled to protection under CAT because he did not establish that it is more likely than not he would be tortured if removed to Indonesia. *See Malhi v. INS*, 336 F.3d 989, 983 (9th Cir. 2003).

Ariahadi's contention that the IJ violated his due process rights in denying voluntary departure fails because Ariahadi was not prevented from reasonably presenting his case. *See Colmenar v. INS*, 210 F.3d 967, 971 (9th Cir. 2000).

PETITION FOR REVIEW DENIED.